

**Florida Department of Law Enforcement**  
**Case: DB-27-0036**

***Seventh Judicial Circuit of Florida***



**Investigative Summary:**

Police Use of Force:

Volusia County Sheriff's Office

Incident Date: May 9, 2010

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Case Agent: Kathi Kennedy

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**SUBJECT:**

**Joshua Gerard**

White/Male

Date of Birth: 05/20/1980

**LAW ENFORCEMENT:**

**Vidal Mejias**

Sergeant

Volusia County Sheriff's Office

**INCIDENT LOCATION:**

1165 South Blue Lake Avenue  
DeLand, Florida

## **INVESTIGATIVE SUMMARY**

This investigative summary is predicated upon an investigation conducted by the Florida Department of Law Enforcement Orlando Regional Operations Center-Daytona Beach Field Office. This investigation will document the circumstances surrounding the officer involved shooting of Joshua Gerard by Volusia County Sheriff's Office (VCSO) Sergeant (SGT) Vidal Mejias that occurred at 1165 South Blue Lake Avenue in Deland, Florida.

On May 9, 2010 at approximately 2135 hours, SGT Mejias of the VCSO responded to a domestic disturbance call, and upon arriving at the residence, a man later identified as Joshua Gerard was near the end of the driveway holding a shotgun. SGT Mejias gave commands for Gerard to drop the weapon, which were ignored. SGT Mejias discharged his service weapon at that time hitting Gerard. Gerard had been transported to Halifax hospital for gunshot wounds. VCSO Chief Bill Lee stated that Gerard's wife, Sarah Gerard was next door with neighbors and had taken off a jacket that had been doused with gasoline by Joshua Gerard. Chief Lee advised SGT Mejias was the only deputy on scene at the time of the shooting, and SGT Mejias' duty belt had already been collected. Chief Lee added that VCSO Crime Scene personnel would examine the scene and collect evidence.

### **I. SA Kennedy's Response & Observations**

On May 9, 2010 at approximately 2215 hours, Resident Agent in Charge (RAC) Wayne Ivey of the Florida Department of Law Enforcement (FDLE) notified Special Agent (SA) Kathi Kennedy to respond to 1165 S. Blue Lake Avenue, DeLand, Florida in reference to a use of force incident involving VCSO SGT Mejias.

At approximately 2240 hours, SA Kennedy arrived at the scene which was secured, and a perimeter was being maintained by VCSO. SA Kennedy observed a shotgun near the end of the driveway, barrel facing toward the street. At the edge of the driveway was a red gas can next to a pile of palm frond leaves. SGT Mejias' marked VCSO patrol vehicle was parked on the road approximately 100 feet from the driveway facing north. Near the driveway and garage area, a strong odor of gasoline was noticed. Approximately ten (10) smoked cigarette butts were located on the driveway around a green kayak, a folded up chair, and a plastic table with a glass containing a brown colored liquid. The garage door was open and a large television was face down on the floor next to a television stand, still plugged into an electrical socket on the wall.

Entering the residence from a door inside the garage that lead to the kitchen, SA Kennedy observed a broken window frame and window glass shattered on the kitchen floor. The window above the sink was broken with glass in the sink and on the counters. There was an empty 750ml bottle of Captain Morgan's spiced rum on the counter. The glass door of the oven was shattered and the top of the stove had five (5) dents from being hit with an object. The other rooms in the residence were clean and in order.

SA Tim Krafft responded to Halifax Hospital in Daytona Beach and met with VCSO Investigator Andy Cotton. Cotton advised that Gerard was shot during a domestic disturbance by VCSO SGT Mejias. Cotton further advised that Gerard was in surgery as a result of gunshot wounds sustained during the incident. SA Krafft was contacted by the attending Registered Nurse (RN) in the surgery and advised to enter the operating room. Upon entering the operating room, SA Krafft met with Dr. Ramshaw at which time Ramshaw provided a bullet/projectile that was removed from Gerard's abdominal area. Ramshaw advised SA Krafft that Gerard had sustained apparent gunshot wounds to the left bicep area and the left hip/abdominal area. Ramshaw further advised that it was possible that one projectile could have caused all of

Gerard's injuries however this was not certain or absolute. SA Krafft obtained the projectile and a blue Oneill bathing suit that Gerard was wearing at the time of arrival at the hospital.

SA Krafft responded to the scene of the shooting and met with VCSO Crime Scene Investigator Dave Dewees. At this time Investigator Dewees took custody of the aforementioned evidentiary items.

## **II. Sworn Statement of SGT Vidal Mejias**

On May 14, 2010 at approximately 1000 hours, SA's Kennedy and Scott Peterka of the FDLE conducted a sworn interview with SGT Mejias. The interview was conducted in furtherance to the shooting of Joshua Gerard on May 9, 2010 at the location of 1165 S. Blue Lake Avenue, DeLand, Florida. SA Kennedy explained the FDLE was conducting a criminal investigation into the use of force incident and asked SGT Mejias if he had been ordered by VCSO command to provide a statement. SGT Mejias stated he was giving the sworn statement freely and voluntarily.

Mejias was responding to a disturbance call on Blue Lake Avenue as a backup unit. Mejias heard dispatch advise that the subject had poured gasoline on the subjects spouse, vandalized the house, broke out windows, and was outside walking on the driveway. Mejias was first to arrive at the residence and stopped approximately 20 to 25 yards from the driveway. Mejias turned on the vehicle spotlight and clearly observed the subject at the end of the driveway holding a weapon that Mejias later learned was a shotgun. Mejias got out of the vehicle and took cover behind the door and spotlight.

Mejias told the subject to drop the weapon three times. The subject did not comply and then started to raise the weapon. Mejias believed the subject was going to shoot, and felt Mejias' life was in danger. Mejias fired three rounds at the subject from a department issued Glock 35, 40 caliber service weapon. Mejias stated the subject went down dropping the weapon, and Mejias called for rescue. Mejias was wearing a VCSO uniform and driving a marked Sheriff's Office vehicle. Mejias had no additional information to provide, and the interview was concluded.

The interview was recorded on a digital recorder then placed onto a compact disk (CD). The CD was marked CD-2 and placed in the Daytona Beach Field Office evidence section. Additionally, the interview will be transcribed by Crime Intelligence Technician Pauline Collins.

## **III. Sworn Statements of Civilian Witnesses**

### ***Sarah Gerard, Wife of Joshua Gerard***

On May 9, 2010 at approximately 2330 hours, SA Kennedy of the FDLE and Investigator Todd Blair of the VCSO interviewed Sarah Elizabeth Gerard. The interview was pursuant to the shooting of Joshua Gerard by SGT Mejias at the location of 1165 S. Blue Lake Avenue, DeLand, Florida.

Sarah Gerard, hereinafter referred to as "Sarah" and Sarah's two children were on the way home at about 2040 hours, when Sarah received a text from Joshua Gerard that said Gerard was leaving. Sarah called Gerard to find out why and stated Gerard told Sarah that Gerard was miserable, wanted to move back to Pennsylvania, hated living in Florida, and sounded irate. Sarah arrived home leaving the kids in the car and went into the garage to try to calm Gerard down and talk Gerard through the rage as Sarah had done in the past. Gerard would not calm down, would not make eye contact with Sarah so Sarah and the children left the house in Sarah's vehicle.

Sarah arrived at a gas station and received three text messages from Gerard's cell phone (706)587-2837 that stated, "Kill them all." "I ain't going to jail." "House destroyed." Sarah drove back to the residence and entered the garage where Gerard was. Gerard threw the television set off a stand onto the garage floor. Gerard poured gasoline on Sarah's kayak and Sarah's hair and neck stating, "I'll burn your ass too" while holding a lit cigarette near Sarah. Gerard punched Sarah in the jaw, then Sarah ran to the car and drove to the house next door to call 911.

Sarah stated Gerard was an alcoholic, was very drunk and was diagnosed with post traumatic stress disorder (PTSD) a year ago. Sarah advised something triggered Gerard, and Gerard had been on the phone with family and friends in Pennsylvania throughout the day. Sarah added that Gerard joined the Army to get away from a bad crowd of people Gerard was hanging out with. Gerard was possibly not taking his medication for PTSD prescribed by the psychologist at the Veteran's Administration.

Sarah was aware Gerard had a rifle and a shotgun, but made sure there was not any ammunition in the house. Sarah did not see the rifle or shotgun when Sarah was at the house, and believed Gerard used it (the shotgun) to get police to take Gerard out. Sarah was not able to see Gerard in the driveway but did observe a spotlight. Next, Sarah heard the sound of three or four gunshots. Sarah then ran toward the driveway to Gerard where the Deputy put Sarah on the ground. Sarah did not have any more information to provide and the interview was concluded. The interview was recorded on a digital recorder then placed onto a compact disk (CD). The CD was marked CD-1 and placed in the Daytona Beach Field Office evidence section.

#### ***Justin Wines, Next Door Neighbor***

At approximately 11:45 PM, SA Mead interviewed Justin Wines at his residence located at 1410 Windy Knoll Lane, DeLand, Florida. Also present for the interview was Detective M. Campanella with the VCSO. The Wines' residence is situated next door to the shooting that occurred at 1165 South Blue Lake Avenue, DeLand, Florida.

At approximately 9:30 PM, Justin Wines heard his wife, Tammy Wines, yell that someone was at their door. Justin Wines went to investigate and observed neighbor, Sarah Gerard, in their driveway. Sarah Gerard said her Josh Gerard, was "freaking out" and tried to catch her on fire. Josh Gerard had thrown Sarah's telephone, so she came to borrow the Wines' telephone to call 911.

Justin Wines went inside the house and retrieved a telephone for Sarah Gerard. Justin Wines stood with Sarah Gerard while she called 911. Tammy Wines came out of the house and stood nearby in the Wines' carport with a partial view of 1165 South Blue Lake Avenue. Tammy Wines reported to Justin Wines that Josh Gerard came out of the Gerard residence and was walking around outside. Justin Wines overheard Sarah Gerard telling the dispatcher that Josh Gerard kept firearms inside their residence on Blue Lake Avenue but Sarah Gerard did not think they had bullets.

Justin Wines observed blue police lights approaching from South Blue Lake Avenue which stopped just north of the driveway leading to the Gerard's residence. Justin Wines was not in a position to see the Gerard's residence and did not see or hear anything between the deputy and Josh Gerard. Pursuant to the deputy arrival, Justin Wines heard three shots from the direction of the Gerard residence that all sounded to be from the same caliber.

Sarah Gerard ran across the yard towards the Gerard residence after hearing the gun shots. Simultaneously, a second deputy, later identified as Josh Mott, arrived on South Blue Lake who

intercepted Sarah Gerard.. Justin Wines walked Sarah Gerard back over to the Wine's driveway where the van was parked. Justin Wines and Sarah Gerard watched as more deputies and medical and fire rescue units arrived. Justin Wines observed medical personnel treat Josh Gerard for an apparent injury and later learned Josh Gerard was still alive and alert.

Justin Wines and wife Tammy do not socialize with their neighbors, Josh and Sarah Gerard. The only time they have talked to or seen the Gerard's was limited to short conversations typical of being neighbors. Justin Wines did learn through one of these brief encounters that Josh Gerard was a military veteran but did not know the specifics of Gerard's service. At one point, after the shooting, Sarah Gerard mentioned to Justin Wines that her husband, Josh Gerard, had been diagnosed with Post Traumatic Stress Disorder (PTSD).

The interview was recorded onto an electronic recording device which was later placed onto a compact disk for evidentiary purposes labeled "CD-3".

#### ***Tammy Wines, Next Door Neighbor***

On May 10, 2010, at approximately 0008 hours, SA Mead interviewed Tammy Wines at 1410 Windy Knoll Lane, DeLand, Florida. Also present for the interview was Detective M. Campanella with the VCSO. The Wines' residence is situated next door to the shooting that occurred at 1165 South Blue Lake Avenue, DeLand, Florida.

Tammy Wines heard a knock at the door and later discovered it was neighbor, Sarah Gerard, who was asking to borrow the Wines' telephone to call the police. Tammy's husband, Justin Wines, brought Sarah Gerard their telephone to use. Sarah Gerard's husband, Josh Gerard, was "going crazy". Tammy Wines attempted to clarify Sarah Gerard's statement and asked if Josh Gerard needed medical attention. Sarah Gerard said "No" and said Josh Gerard was becoming physical and it had been happening for a period of time. Sarah Gerard said she was tired of it and needed to call the police.

Tammy Wines was positioned in the carport with a view of Josh Gerard. Tammy Wines saw Josh Gerard come out of the Gerard's home and walk down the driveway smoking a cigarette. Tammy Wines said it appeared Josh Gerard might have been carrying a rifle or shotgun but was unsure and did not tell Sarah Gerard; therefore that information was not relayed to the dispatcher. Tammy Wines did hear Sarah Gerard tell the 911 operator that there are guns in the Gerard residence but no bullets because of previous incidents between them. Tammy Wines subsequently heard three shots come from next door. In response Sarah Gerard ran towards the front yard.

Tammy Wines did not see the deputies arrive next door and did not hear a verbal confrontation from the direction of the Gerard's residence. Tammy Wines heard the shots and believed that Josh Gerard may have either shot himself or shot in the direction of the Wines' residence, knowing that Sarah Gerard may have been there. Sarah Gerard and Justin Wines returned from the Gerard residence and told Tammy Wines that Josh Gerard had been shot.

The interview was recorded onto an electronic recording device which was later placed onto a compact disk for evidentiary purposes labeled "CD-4".

#### **IV. Sworn Statement of Joshua Gerard**

On May 14, 2010 at approximately 1345 hours, SA's Kennedy and Tim Krafft of the FDLE conducted a sworn interview with Joshua Gerard at Halifax Hospital room 1727, in Daytona Beach. The interview was conducted regarding Gerard's involvement in a shooting with VCSO

SGT Mejias on May 9, 2010. The shooting took place at Gerard's residence located at 1165 S. Blue Lake Avenue, DeLand, Florida.

SA Kennedy explained to Gerard that the FDLE was investigating the shooting, specifically the use of force by the police. Gerard appeared to be alert, and Gerard acknowledged understanding the role the FDLE had with regard to the shooting. SA Kennedy asked if Gerard would be willing to discuss the circumstances of the shooting, and Gerard agreed to be interviewed.

Gerard believed Gerard's wife, Sarah Gerard may have called 911 because Gerard and Sarah were fighting, and Gerard was acting erratic, probably getting angry and punching walls or something, Gerard was not exactly sure. Gerard remembered having gasoline to light a pile of wood on fire, and thought Sarah was trying to get in front of him and the pile of wood. Gerard may have grabbed Sarah's kayak and poured gas inside it. Gerard thought that might have upset Sarah who could have taken it the wrong way and called the police. That was all Gerard remembered about the gasoline.

Gerard recalled having a 20 gauge shotgun while burning stuff in the driveway because the county never picked it up. Gerard was angry at Sarah and the county so Gerard went outside to burn a pile of wood. Gerard had the shotgun for protection because a bear had been seen roaming the area and it was dark outside. Gerard described carrying the shotgun where the shells would be loaded into it. Gerard remembered being at the end of the driveway near the street and saw a police car because the car sped up quickly and had a light on the side of it. Gerard did not recall doing anything wrong and kept walking toward the house. Gerard saw police on both sides of the driveway. Gerard did not remember if the deputy (SGT Mejias) said anything to Gerard. Gerard recalled next being shot in the back of the elbow and back of the hip.

SA Kennedy asked how many shells Gerard loaded into the shotgun. Gerard answered none. SA Kennedy asked Gerard what was the purpose for the shotgun if there were not any shells in it. Gerard answered that Gerard did not know, and added Gerard was intoxicated and thought it was protection from the bear. Gerard claimed not to even own any shells for the shotgun. Gerard claimed not to have raised the shotgun or aim the shotgun at SGT Mejias, and did not want SGT Mejias to shoot Gerard. Gerard did not want to end Gerard's life and did not know why any of this happened. Gerard recalled hearing "Stay down, stay down, you've been shot" then Gerard woke up in the hospital.

SA Kennedy asked if Gerard recalled sending text messages to Sarah earlier that evening that stated Gerard was upset. Gerard's head moved back and forth to the left and right, indicating no. Gerard did recall Sarah had left with the kids and went to the next door neighbor's house, then came back when the police were at the house. SA Kennedy read three text messages to Gerard that was received on Sarah's phone (706)587-2500 on May 9, 2010. The first, "I am leaving" received at 2040 hours; second, "Kill em all" received at 2110 hours; the last text "I ain't goin 2 jail" was received at 2112 hours. The texts were received on Sarah's phone before law enforcement arrived at Gerard's residence. Gerard did not remember anything about the text messages. SA Kennedy asked if Gerard was on any medication that night since Gerard had been drinking, and if a medication might have made Gerard think differently. Gerard answered no.

At the conclusion of the interview SA Krafft asked if Gerard was coherent and understood the questions Gerard had been asked. Gerard answered yes. Gerard was given the opportunity to provide additional information for the investigation and did not have any further information so the interview was concluded. The interview was recorded on a digital recorder then placed onto

a compact disk (CD). The CD was marked CD-5 and placed in the Daytona Beach Field Office evidence section.

#### **VI. VCSO Crime Scene**

VCSO Investigator Christy Bourke and Investigator David Dewees processed the crime scene. The report included a compact disk (CD) containing crime scene photos, sketches, crime scene sign-in log and a Property Report. A summary of the report was as follows:

SGT Mejias' marked VCSO patrol vehicle was parked partially on the roadway facing north in the northbound lane 78.4 feet south of the edge of Gerard's driveway. The measurement was taken from the center of the front driver side tire. Investigator Bourke collected a measurement of 93.7 feet from the center of the shotgun located in the driveway, southwest to the location in which SGT Mejias was standing in between the patrol vehicle and the opened driver side door.

The report included a list of all the physical evidence recovered from the crime scene located at 1165 S. Blue Lake Avenue, DeLand, Florida. Included among the physical evidence recovered was the following items: three shell casings, one Glock model 35 semi-automatic pistol, serial number EBE411 containing one live chambered cartridge, and one magazine containing 12 cartridges, one Remington 870 express magnum shotgun and one projectile. See VCSO incident reports for specific details about all the items collected as evidence.

#### **VII. Results of FDLE Forensics Firearms Examination**

On June 11, 2010 at approximately 0900 hours, SA Kennedy of the FDLE received the firearms lab report from Crime Lab Analyst (CLA) Sarah Hayman, Firearms Section. The report was in furtherance to the shooting of Joshua Gerard by VCSO SGT Mejias at the location of 1165 S. Blue Lake Avenue, DeLand, Florida.

CLA Hayman's FDLE Report 20100701478, dated June 1, 2010 documented the examination and comparison of physical evidence submitted by VCSO Investigator Mike Campanella. The following exhibits were submitted:

- Ex 1 One 40 caliber Glock model 35 semiautomatic pistol, serial number EBE411US
- Ex 2 One magazine & (12) 40 caliber cartridges
- Ex 3 One fired 40 caliber cartridge case
- Ex 4 One fired 40 caliber cartridge case
- Ex 5 One fired 40 caliber cartridge case
- Ex 6 One 40 caliber cartridge
- Ex 7 One fired copper-jacketed bullet

The pistol was test fired using Exhibit 2 magazine and three of the cartridges and was found to be functional. The report stated that the three (3) fired 40 caliber cartridge cases labeled as Exhibits 3 through 5, were identified as having been fired in the Exhibit 1 pistol; SGT Mejias' Glock model 35, serial number EBE411US.

CLA Hayman noted that during testing, cartridges failed to chamber because the magazine did not properly seat in the pistol due to damage to the magazine catch notch.